



**SENATE AMENDMENT 1,
TO 1995 ASSEMBLY BILL 554**

September 27, 1995 - Offered by Senator ADELMAN.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 11: before "acquisition" insert: "customer service charges
3 imposed by a financial institution,".

4 **2.** Page 4, line 1: before that line insert, after page 3, line 2, of the material
5 inserted by assembly amendment 2, insert:

6 "SECTION 1g. 186.46 of the statutes is created to read:

7 **186.46 Unconscionable service charges. (1) DEFINITION.** In this section,
8 "financial institution" has the meaning given in s. 705.01 (3).

9 **(2) UNCONSCIONABILITY.** If a court as a matter of law finds that a service charge
10 imposed by a financial institution on a customer is unconscionable, the court shall,
11 in addition to the remedies authorized under sub. (4), either refuse to enforce the
12 service charge against the customer, or so limit the application of any unconscionable
13 aspect as to avoid an unconscionable result.

14 **(3) FACTORS.** Without limiting the scope of sub. (2), the court may consider,
15 among other things, any of the following as pertinent to the issue of
16 unconscionability:

1 (a) Costs incurred by the financial institution, plus a profit margin, in
2 providing a service.

3 (b) The deterrence of misuse by customers of financial institution services.

4 (c) The enhancement of the competitive position of the financial institution in
5 accord with the financial institution’s marketing strategy.

6 (d) Maintenance of the safety and soundness of the financial institution.

7 **(4) REMEDIES.** (a) A financial institution that violates this section is liable to
8 the customer in an amount equal to 3 times the actual damages sustained as a result
9 of the violation.

10 (b) A customer entitled to relief under par. (a) is also entitled to recover costs,
11 disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1).”.

12 **3.** Page 4, line 1: before that line, after page 4, line 15, of the material inserted
13 by assembly amendment 2, insert:

14 “**SECTION 1r.** 214.597 of the statutes is created to read:

15 **214.597 Unconscionable service charges. (1) DEFINITION.** In this section,
16 “financial institution” has the meaning given in s. 705.01 (3).

17 **(2) UNCONSCIONABILITY.** If a court as a matter of law finds that a service charge
18 imposed by a financial institution on a customer is unconscionable, the court shall,
19 in addition to the remedies authorized under sub. (4), either refuse to enforce the
20 service charge against the customer, or so limit the application of any unconscionable
21 aspect as to avoid an unconscionable result.

22 **(3) FACTORS.** Without limiting the scope of sub. (2), the court may consider,
23 among other things, any of the following as pertinent to the issue of
24 unconscionability:

1 (a) Costs incurred by the financial institution, plus a profit margin, in
2 providing a service.

3 (b) The deterrence of misuse by customers of financial institution services.

4 (c) The enhancement of the competitive position of the financial institution in
5 accord with the financial institution's marketing strategy.

6 (d) Maintenance of the safety and soundness of the financial institution.

7 **(4) REMEDIES.** (a) A financial institution that violates this section is liable to
8 the customer in an amount equal to 3 times the actual damages sustained as a result
9 of the violation.

10 (b) A customer entitled to relief under par. (a) is also entitled to recover costs,
11 disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1).".

12 **4.** Page 5, line 8: after that line insert:

13 **"SECTION 2m.** 215.39 of the statutes is created to read:

14 **215.39 Unconscionable service charges. (1) DEFINITION.** In this section,
15 "financial institution" has the meaning given in s. 705.01 (3).

16 **(2) UNCONSCIONABILITY.** If a court as a matter of law finds that a service charge
17 imposed by a financial institution on a customer is unconscionable, the court shall,
18 in addition to the remedies authorized under sub. (4), either refuse to enforce the
19 service charge against the customer, or so limit the application of any unconscionable
20 aspect as to avoid an unconscionable result.

21 **(3) FACTORS.** Without limiting the scope of sub. (2), the court may consider,
22 among other things, any of the following as pertinent to the issue of
23 unconscionability:

1 (a) Costs incurred by the financial institution, plus a profit margin, in
2 providing a service.

3 (b) The deterrence of misuse by customers of financial institution services.

4 (c) The enhancement of the competitive position of the financial institution in
5 accord with the financial institution's marketing strategy.

6 (d) Maintenance of the safety and soundness of the financial institution.

7 **(4) REMEDIES.** (a) A financial institution that violates this section is liable to
8 the customer in an amount equal to 3 times the actual damages sustained as a result
9 of the violation.

10 (b) A customer entitled to relief under par. (a) is also entitled to recover costs,
11 disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1).".

12 **5.** Page 21, line 20: after that line insert:

13 **"SECTION 34m.** 224.19 of the statutes is created to read:

14 **224.19 Unconscionable service charges. (1) DEFINITION.** In this section,
15 "financial institution" has the meaning given in s. 705.01 (3).

16 **(2) UNCONSCIONABILITY.** If a court as a matter of law finds that a service charge
17 imposed by a financial institution on a customer is unconscionable, the court shall,
18 in addition to the remedies authorized under sub. (4), either refuse to enforce the
19 service charge against the customer, or so limit the application of any unconscionable
20 aspect as to avoid an unconscionable result.

21 **(3) FACTORS.** Without limiting the scope of sub. (2), the court may consider,
22 among other things, any of the following as pertinent to the issue of
23 unconscionability:

1 (a) Costs incurred by the financial institution, plus a profit margin, in
2 providing a service.

3 (b) The deterrence of misuse by customers of financial institution services.

4 (c) The enhancement of the competitive position of the financial institution in
5 accord with the financial institution's marketing strategy.

6 (d) Maintenance of the safety and soundness of the financial institution.

7 **(4) REMEDIES.** (a) A financial institution that violates this section is liable to
8 the customer in an amount equal to 3 times the actual damages sustained as a result
9 of the violation.

10 (b) A customer entitled to relief under par. (a) is also entitled to recover costs,
11 disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1).”.

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(END)